IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.09.2006

Coram:

The Honourable Mr.A.P.SHAH, CHIEF JUSTICE
and
The Honourable Mr.Justice K.CHANDRU

Writ Appeal Nos. 336 of 2003, 997 of 2006 and 1006 of 2006
and
connected miscellaneous petitions

W.A.No.336 of 2003

E.Ramasamy .... Appellant/Petitioner in WP 39441/02

Vs.

1. Tamil Nadu Electricity Board,
   rep. by its Chairman,
   800, Anna Salai,
   Chennai - 600 002.

2. Chief Engineer (General)
   Tamil Nadu Electricity Board,
   800, Anna Salai,
   Chennai - 600 002. .... Respondents/Respondents in WP 39441/02

W.A.No.997 of 2006

1. The Tamil Nadu Electricity Board
   rep. by its Chairman,
   No.800, Anna Salai,
   Chennai - 600 002.

2. The Chief Engineer/Personnel
   Tamil Nadu Electricity Board,
   800, Anna Salai,
   Chennai - 2.

3. The Additional Chief Engineer
   Dindigul Electricity Distribution Circle,
   Tamil Nadu Electricity Board,
   Meenatchinaickenpatti,
   Dindigul - 2.

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4. The Superintending Engineer (Incharge)
Dindigul Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Meenatchinaickenpatti,
Dindigul - 2. …. Appellants/Respondents in WP 17640/04

Vs.

N.Karthick …. Respondent/Writ Petition in 17640/04

W.A.No. 1006 of 2006

1. The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai - 2.

2. The Superintending Engineer,
Erode Electricity Distribution Circle/TNEB,
Tamil Nadu Electricity Board,
Erode. …. Appellants/Respondents in WP 4333/06

Vs.

M.Rubasri …. Respondent/Writ Petition in WP 4333/06

PRAYER:

W.A.No.336 of 2003: Appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge passed in W.P.No.39441 of 2002 dated 25.10.2002. Praying for Writ Mandamus directing the Respondents herein to consider the claim of the petitioner for compassionate appointment in the Respondent Board in any suitable vacancy within a time frame.

W.A.No.997 of 2006: Appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge passed in W.P.No.17640 of 2004 dated 21.03.2006. praying for Writ of Certiorarified Mandamus calling for the records relating to the order of the 3rd Respondent passed in his proceedings Na. Ka. No. 006647/90/N1/P.1/2/Vu.3/Ko.Pa.Aa.Be/2001 dated 4/5/2001 and the consequent order passed by the 4th Respondent in his proceedings Ka.Wo.Me.Po/TNEB/TKAL/Ni.pA.2/nI.U.1./Ko.Va.Ve/Tha.No. 1147/2003 dated 7/11/2003 quash the same and consequently direct the respondents to provide employment to the petitioner in the respondent Bound on compassionate ground commensurate with his qualification.

W.A.No.1006 of 2006: Appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge passed in

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W.P.No.4333 of 2006 dated 22.03.2006. praying for to issue Writ of Mandamus directing the respondents to consider the fresh application of the petitioner for compassionate appointment dated 12/09/2005 and pass appropriate orders an merits and in the light of the Judgment reported in 2004 (3) CTC-120-and provide compassionate appointment to the petitioner.

For Appellant in
W.A.No.336 of 2003 :::: Mr. K.M.Ramesh

For Respondents in
W.A.No.336/2003 :::: Mr.M.Vaidyanathan

For Appellants in
W.A.No.997 of 2006 ::: Mr.M.Vaidyanathan

For Respondent in
W.A.No.997 of 2006 :::: Mr.T.S.Sivagnanam

For Appellants in
W.A.No.1006 of 2006 :::: Mr.M.Vaidyanathan

For Respondent in
W.A.No.1006/2006 :::: Mr.S.Selvathirumurugan

J U D G M E N T

(The Judgment of the Court was delivered by Hon'ble The Chief Justice)

All these appeals relate and involve common questions of law and facts, and hence are disposed of by this common judgment.

2. The facts giving rise to these appeals are stated in a nutshell as follows: -

Writ Appeal No. 336 of 2003

The father of the appellant herein was employed as a Lineman with the Tamil Nadu Electricity Board. He died in harness on 22.01.1994. At that time, the appellant was aged about 11 years. The appellant's elder brother namely, E.Govindaraj was aged 19 years at the time of his father's death and he applied for compassionate appointment immediately on the death of his father. However, the respondent/Board vide order dated 30.10.1996 rejected the request for compassionate appointment, as the appellant's brother did not possess necessary educational qualification for being appointed in the service of the Board. The appellant attained majority in the year 2001. In the same year, the mother of the appellant sent a representation to the respondent/Board requesting for appointment of the appellant on compassionate ground. Since there was no response to the said representation, a fresh representation was made on 8.8.2002 and a legal notice was also sent by registered post with acknowledgment due.

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As there was no response from the Board even after legal notice, the appellant filed Writ Petition No.39441 of 2002 seeking a direction to the respondent/Board for providing compassionate appointment to him. The learned single Judge relying upon the judgment of the Supreme Court in Sanjay Kumar v. State of Bihar, 2000 (7) SCC 193 held that if the appellant/petitioner is to be appointed on compassionate ground, it would amount to compelling the Electricity Board to keep one post vacant for ever to be filled up on compassionate ground, among the persons coming under the family of the deceased employee. The learned single Judge further held that there is no express provision under the scheme of the Electricity Board to keep such post forever. Consequently, finding no legal right vested with the petitioner for being considered for appointment on compassionate ground, the learned single Judge dismissed the petition.

W.A.No. 997 of 2006

The father of the respondent, who was working as Wireman/Lineman under the Tamil Nadu Electricity Board/ first appellant herein, died in harness on 20.10.999 leaving behind him the respondent, his elder brother, his mother and two daughters. The respondent was 14 years of age and was studying 8th standard at the time of his father's death. The respondent made an application on 18.11.2000 for appointment on compassionate ground. The appellant/Board declined the request made by the respondent for appointment in the first appellant/Board on the ground that he had not completed 18 years of age. The respondent attained majority on 10.04.2003. He made another representation on 23.9.2003 to the Board requesting for compassionate appointment, which was rejected by the Board vide order dated 07.11.2003. Being aggrieved, the respondent filed W.P.No.17640 of 2004 seeking a direction to the appellant/Board to provide compassionate employment to the respondent. The learned single Judge following the earlier decision of this Court in Meer Ismail Ali.T v. The Tamil Nadu Electricity Board, 2004 (3) CTC 120) held that the application made by the respondent on attaining majority is maintainable, and consequently issued direction to the appellant/Board to consider the application of the respondent within a period of six weeks.

W.A.No.1006 of 2006

The father of the respondent was working as a Field Assistant under the Tamil Nadu Electricity Board/first appellant herein, and he died on 8.12.2001 leaving behind his wife, two daughters including the respondent. The mother of the respondent requested the Board to give compassionate appointment to the respondent on 22.4.2004. By order dated 11.8.2004, the appellant/Board declined the request of the respondent on the ground that the application ought to have been filed within three years. The respondent completed 18 years of age on 15.06.2005. She sent a fresh representation on 12.9.2005. As there was no response from the Board, the respondent approached this Court seeking a direction to the Board to provide compassionate appointment. The learned single Judge rejected the defence of the Board that the application was filed beyond the period of three years and therefore not maintainable. In support of his conclusion, he relied upon the decision of this Court reported in Meer Ismail Ali.T v. The Tamil Nadu Electricity Board (cited supra).

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3. Learned standing counsel for the Electricity Board strenuously contended that under the scheme framed by the Board, an application for compassionate ground is required to be made within three years from the date of death of the employee, and there can be no reservation for the minor to become major and claim appointment on compassionate ground, unless the scheme envisages such an eventuality. Learned standing counsel drew our attention to the several judgments of the Supreme Court laying down that the grant of compassionate employment is in the nature of exception to Articles 14 and 16 and the appointments have to be made strictly in conformity with the provisions or guidelines governing the scheme and the Court has no power to give directions contrary to the scheme.

4. On the other hand, learned counsel appearing for the legal heirs of the deceased/employee, contended that in cases of legal heirs of the deceased employee being minor, fairness demands that such persons should be allowed to make application after attaining majority. Heavy reliance was placed on the unreported decision of the Division Bench of this Court in W.A.No.3050 of 2003 dated 08.03.2005 (Indiraniammal v. The Chief Engineer (Personnel), The Tamil Nadu Electricity Board, No.800, Anna Salai, Chennai - 600 002 and another). According to the learned counsel, the Division Bench in the aforesaid case has held that it is open for the legal heirs of the deceased employee to make an application after attaining majority and there is nothing in the rule, which precludes the consideration of such application and therefore, the rejection of the request of the heirs of the deceased employee is clearly contrary to law and further held that the learned single Judge has rightly intervened in the matter and directed the Board to decide the application made by the legal heirs of the deceased employee on merits.

5. The G.O. bearing B.P.Ms. (FB) No.46 (Adm.Branch) dated 13.10.1995 which lays down the scheme for appointment on compassionate grounds reads thus: -

" TAMIL NADU ELECTRICITY BOARD
(ABSTRACT)

Recruitment - Employment assistance to the dependant of the deceased employee of the Board who died while in service. Appointment on Compassionate grounds - Modification orders - issued.

Permanent B.P.Ms.(FB) No.46 (Adm.Branch) Dt.13.10.95

Thiruvalluvar Aandu 2026
Yuva Aandu
Purattasi 26.

READ:

G.O.Ms.No.120 (Labour and Employment Department) dt.26.6.95

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PROCEEDINGS:

In the G.O. cited, the Government of Tamil Nadu (Labour and Employment Department) have issued the following modifications to the scheme of compassionate grounds appointment to the dependants of the deceased employees: -

(a) The application for appointment on compassionate grounds should be made within three years of the death of Govt. Servant.

(b) The maximum age limit, for such appointment be raised to 50 years in the case of widows of the deceased Govt. Servants.

2. As per the existing scheme in the Board, the employment assistance is being considered to the dependants of the employees of the Board who died while in service without any time limit for the submission of the application for employment/assistance. It is specified that the age of sons/unmarried daughters, widowed or deserted daughters, divorced daughters should not be more than 30 years and in the case of widow 40 years on the date of death of the Board employee.

3. The Board has decided to adopt the orders of the Govt. Accordingly the following modification of the existing scheme of providing employment assistance to the dependants of the deceased employees of the Board is ordered.

1. The application for appointment on compassionate grounds should be made within three years from the date of death of employees of the Board.
2. The maximum age limit, for such appointment be raised to 50 (Fifty) years in the case of widows of the deceased employees of the Board.
3. In the case of already expired staff while in service the dependants should apply for employment assistance within three years from the date of issue of this order.

(BY ORDER OF THE BOARD)

Olney Aron

Chief Engineer (Personnel)"

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6. It appears that earlier there was a provision that if the applicant is a minor, he had to make an application after attaining majority and the fresh application after attaining majority would be considered based on the Rules of the Board applicable on that day. By Circular dated 06.04.2002 in 040574/G8/G82/2002-1 the above provision was deleted, and as per the amended G.O the outer limit for filing application for employment on compassionate grounds is three years from the date of death of the employee.

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7. In State of Harayana & Ors. v. Rani Devi & Anr. (AIR 1996 SC 2445), the Supreme Court while examining the object of compassionate appointment pointed out that the claim of the person concerned for appointment on compassionate ground is based on the premise that he was dependant on the deceased-employee. Strictly this claim cannot be upheld on the touchstone of Articles 14 and 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. In the aforesaid case, it was held that the scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds.

8. In Life Insurance Corporation of India v. Asha Ramachandra Ambekar (Mrs.) and another, (1994) 2 SCC 718, it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointment on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointment.

9. In Umesh Kumar Nagpal v. State of Haryana and others, (1994) 4 SCC 138, it was noted that as a rule in public service appointment should be made strictly on the basis of open invitation of application and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

10. In Smt.Sushma Gosain and others v. Union of India and others, (1989) 4 SCC 468, it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit.

11. In State of U.P and others v. Paras Nath, (1998) 2 SCC 412, it was held that the purpose of providing employment to the dependant of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on

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compassionate grounds provided there are rules providing for such appointments.

12. In Punjab National Bank v. Ashwini Kumar Taneja, (2004) 7 SCC 265, the Court observed that appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement of making appointments on open invitation of application on merits. The basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crisis.

13. In State of J & K; v. Sajad Ahmed, 2006 (7) Scale 136, the Bench observed: - (paragraph-14)

> "In Umesh Kumar Nagpal v. State of Haryana and others, (1994) 4 SCC 138, it was ruled that public service appointment should be made strictly on the basis of open invitation of applications and on merits. The appointment on compassionate ground cannot be a source of recruitment. It is merely an exception to the requirement of law keeping in view the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over sudden financial crisis. Such appointments on compassionate ground, therefore, have to be made in accordance with rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. This favourable treatment to the dependant of the deceased employee must have clear nexus with the object sought to be achieved thereby, i.e., relief against destitution. At the same time, however, it should not be forgotten that as against the destitute family of the deceased, there are millions and millions of other families which are equally, if not more, destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectation, and the change in the status and affairs of the family engendered by the erstwhile employment, which are suddenly upturned."

14. In State of Harayana & Ors. v. Rani Devi & Anr.(cited supra) the Court observed: -

> " It was also impressed that appointments on compassionate ground cannot be made after lapse of reasonable period which must be specified in the rules because the right to such employment is not a vested right which can be exercised at any time in future." (emphasis supplied)

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15. In Sanjay Kumar v. State of Bihar and others, (cited supra), Justice M.Jagannadha Roa speaking for the Bench held as follows: -

> " We are unable to agree with the submissions of the learned senior counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education v. Pushpendra Kumar, (1998) 5 SCC 192. It is also significant to notice that on the date when the first application was made by the petitioner on 2.6.1998, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief." (emphasis supplied)

16. It is, thus, clear that the courts cannot direct appointments on compassionate grounds de hors the provisions of the Scheme in force governed by rules/regulations/instructions. If in a given case, the department of the Government concerned declines, as a matter of policy, not to deviate from the mandate of the provisions underlying the Scheme and refuses to relax the stipulation in respect of ceiling fixed therein, the courts cannot compel the authorities to exercise its jurisdiction in a particular way and that too by relaxing the essential conditions, when no grievance of violation of substantial rights of parties could be held to have been provided, otherwise. The purpose of providing employment to a dependant of a government servant dying in harness in preference to anybody else is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. None of these considerations can operate when the application is made after the death of the employee. The reason for making compassionate appointment, which is exceptional, is to provide immediate financial assistance to the family of a government servant who dies in harness, when there is no other earning member in the family.

17. In Sanjay Kumar's case (cited supra), the Court has expressly held that there cannot be reservation of a vacancy till such time as the applicant becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief. An application made after the period stipulated under the scheme is not maintainable, and it is not permissible to hold that such application could be made after attaining majority. We are afraid, the Division Bench which rendered the judgment in Indiraniammal v. The Chief

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Engineer (Personnel), The Tamil Nadu Electricity Board, No.800, Anna Salai, Chennai - 600 002 and another) (cited supra) has not followed the earlier decisions of the Supreme Court and does not lay down correct law. The order of the learned single Judge in Meer Ismail Ali.T v. The Tamil Nadu Electricity Board (cited supra) is rather cryptic wherein the learned single Judge has observed that without going into the merits of the controversy the petitioner be given employment on humanitarian consideration. None of the judgments of the Supreme Court cited above are considered.

18. Coming to the facts of W.A.No.336 of 2003, it is seen that the father of the appellant died on 22.01.1994, and the application for compassionate appointment was made by the appellant only in the year 2002 after attaining majority, which was obviously beyond the period prescribed under the scheme. In W.A.No.997of 2006, the application was made by the respondent within three years, but at that time he was a minor, and therefore the application was not maintainable. The respondent attained majority only in the year 2003 and thereafter he made the second application, which was also rejected by the Board as the same was filed beyond three years time. Similarly in W.A.No.1006/2006, the application for compassionate appointment was made by the respondent when he was a minor and was, therefore, rightly rejected by the Board. A fresh application was made only in the year 2005, which was beyond the period of three years. Consequently, the Board rejected the application as it was filed beyond the prescribed period of three years. Thus in none of these cases the applications were made within three years period as prescribed by the scheme. Under the circumstances, the Board was justified in rejecting the request for compassionate appointment.

19. In the result, in view of the foregoing discussion, Writ Appeal Nos. 997 of 2006 & 1006 of 2006 are allowed. The impugned orders are set aside. Writ Appeal No.336 of 2003 is dismissed.

pv/

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Chairman
   Tamil Nadu Electricity Board,
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   Dindigul - 2.

+ one cc to Mr. K.M. Ramesh, Advocate sr no. 43772
+ one cc to Mr. T.S. Sivagnanam, Advocate sr no. 43755
+ one cc to Mr. S. Selvathirumurugan, Advocate sr no. 44041
+ 2ccs to Mr. M. Vaidyanathan, Advocate sr nos. 43878, 43880

TJL(CO)
NM(28.11.2006)

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